
**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

CONSTITUTIONAL CONCEPTS
FOUNDATION et al,

Plaintiffs,

vs.

BRIDGELINE CAPITAL et al.

Defendants.

Case No. 2:07-CV-641 DB

REPORT AND RECOMMENDATION

Judge Dee Benson

Magistrate Judge Brooke C. Wells

District Judge Dee Benson referred this matter to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B).¹

Plaintiffs Constitutional Concepts Foundation and James Barrus, filed their complaint in this case on August 28, 2007.² On April 30, 2009, the court issued an order to show cause why the case should not be dismissed because more than 120 days had passed since the filing of Plaintiffs' complaint³ and Plaintiffs have failed to provide the court with the requisite proof of service to demonstrate that the summons and complaint had been served on each of the Defendants.⁴ That order directed Plaintiffs to respond to the court within fifteen (15) days and inform the court why service has not been made upon the Defendants. That order also warned

¹ Docket no. 4.

² Docket no. 1.

³ See Fed.R.Civ.P. 4(m) (2008).

⁴ See *id.* 4(l).

Plaintiffs that failing to so respond would result in the court dismissing this action on its own motion.⁵ As of the date of this Report and Recommendation, the fifteen-day period referenced in the court's order has expired and the court has not received any response from Plaintiffs. Moreover, in an order from October 2007, this court already directed Plaintiffs to "remedy any defects in service promptly or face possible dismissal."⁶

In relevant part, rule 4(m) provides that

[i]f a defendant is not served within 120 days after the complaint is filed, the court-on motion or on its own after notice to the plaintiff-must dismiss the action without prejudice against that defendant or order that service be made within a specified time.⁷

As noted by the record, more than 120 days have passed since the filing of Plaintiffs' complaint and Plaintiffs have not provided the court with the requisite proof of service to show that the summons and complaint have been served on each of the Defendants.⁸ The court's order to show cause has provided Plaintiffs with notice of this deficiency as required by rule 4(m) and Plaintiffs have failed to respond to that order.

Accordingly, pursuant to rule 4(m), **IT IS HEREBY RECOMMENDED** that this case be dismissed, without prejudice.

Copies of the foregoing report and recommendation are being mailed to all parties who are hereby notified of their right to object. Any objection must be filed within ten days after

⁵ See Order dated April 30, 2009.

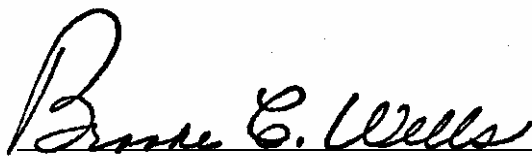
⁶ Order dated October 12, 2007.

⁷ Fed.R.Civ.P. 4(m).

⁸ See *id.* 4(l).

receiving this Report and Recommendation. Failure to object may constitute a waiver of objections upon subsequent review.

DATED this 19th day of May, 2009.

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is written in a cursive style with a large initial "B" and "W".

Brooke C. Wells
United States Magistrate Judge